

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION**

Michael A. Smith

PLAINTIFF,

v.

Marvin Evan Tipton and Underwood & Weld
Co., Inc.

DEFENDANTS.

NOTICE OF REMOVAL

TO: PLAINTIFF AND HIS ATTORNEYS:

Defendants Marvin Evan Tipton and Underwood & Weld Co., Inc. (“Defendants”), by and through undersigned counsel, hereby remove the above-entitled action from the Court of Common Pleas, Anderson County, to this Court, pursuant to 28 U.S.C. §§ 1332 and 1441(a) and (b), and 1446 on the following grounds:

1. On or about January 10, 2022, a civil action was filed in the Court of Common Pleas, Anderson County, South Carolina, styled Michael A. Smith v. Marvin Evan Tipton and Underwood & Weld Co., Inc., Case No. 2022-CP-04-00048 (the “State Court Action”).

2. Not more than thirty days ago, the last served Defendant was allegedly served with a copy of the Summons and Complaint in the State Court Action. This Notice of Removal is filed within thirty days of alleged service.

3. Prior to filing this Notice of Removal, Defendants have made no answer, pleading, or appearance in the State Court Action.

4. The Complaint is based upon damages claimed as arising from an alleged automobile accident between one or more of the parties.

5. The Complaint asserts Plaintiff, Michael A. Smith is a citizen and resident of the State of South Carolina, County of Anderson (Complaint ¶ 1).

6. Defendant Marvin Evan Tipton is a citizen and resident of the County of Yancey, State of North Carolina

7. Defendant Underwood & Weld Co., Inc. is and was at all times relevant hereto, a corporation organized and existing under the laws of the state of North Carolina with its principal place of business in North Carolina.

8. It is apparent from the face of the Complaint that Plaintiff seeks recovery of an amount in excess of \$75,000, exclusive of interest and costs. Further, a request was made to Plaintiff's attorney for a stipulation to limit damages below the jurisdictional amount and Plaintiff was unable to consent.

9. The Court has jurisdiction pursuant to 28 USC § 1332, inasmuch as the parties are citizens and residents of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

10. Accordingly, there is complete diversity of citizenship among the parties as Plaintiff is a citizen and resident of states other than those of defendants, for purposes of this Court's exercise of jurisdiction pursuant to 28 U.S.C. § 1332.

11. Written notice of the filing of this Notice of Removal has been served on all parties herein and a copy of this notice has been filed with the Clerk of Court of Anderson County, South Carolina.

12. This Notice of Removal is filed in compliance with Rule 11, Federal Rules of Civil Procedure.

13. Attached as **Exhibit A** are copies of all processes and other documents filed in the State Court Action.

14. Defendants are filing this notice solely by reason of the requirements of 28 U.S.C. § 1446, and this notice has been timely filed pursuant to 28 U.S.C. § 1446(b), and removal is proper under 28 U.S.C. § 1446(c).

15. Defendants reserve all defenses, including but not limited to, those under Rule 12(b) of the Federal Rules of Civil Procedure and do not waive said defenses by the filing of this notice.

WHEREFORE, Defendant respectfully prays that the above-entitled action now pending against them in the Court of Common Pleas, Fairfield County, South Carolina, be hereby removed from the above-referenced State Court to the United States District Court for the District of South Carolina.

This 11th day of February, 2022.

s/ Robert D. Moseley, Jr.

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